

**House File 2157 - Introduced**

HOUSE FILE 2157

BY PETTENGILL and R. OLSON

**A BILL FOR**

1 An Act relating to state agency decision making.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 9A.105, subsection 1, paragraph h, Code  
2 2014, is amended to read as follows:

3 h. Whether the applicant or any person named pursuant to  
4 paragraph "g" has been convicted of a ~~crime~~ felony that, if  
5 committed in this state, would be a crime involving moral  
6 turpitude ~~or which is a felony~~, and identify the ~~crime~~ felony.

7 Sec. 2. Section 9A.106, subsection 2, paragraph a, Code  
8 2014, is amended to read as follows:

9 a. Been convicted of a ~~crime~~ felony that, if committed in  
10 this state, would be a crime involving moral turpitude ~~or a~~  
11 felony.

12 Sec. 3. Section 17A.3, subsection 1, paragraph a, Code 2014,  
13 is amended to read as follows:

14 a. (1) Adopt as a rule a description of the organization of  
15 the agency which states the general course and method of its  
16 operations, the administrative subdivisions of the agency and  
17 the programs implemented by each of them, a statement of the  
18 mission of the agency, and the methods by which and location  
19 where the public may obtain information or make submissions or  
20 requests.

21 (2) Each board, commission, or other multimember agency  
22 shall follow Robert's rules of order in governing the conduct  
23 of agency meetings unless it is inconsistent with Iowa law.

24 Sec. 4. Section 17A.4, subsection 1, paragraph b, Code 2014,  
25 is amended to read as follows:

26 b. (1) Afford all interested persons not less than twenty  
27 days to submit data, views, or arguments in writing, including  
28 in an electronic format. If timely requested in writing by  
29 twenty-five interested persons, by a governmental subdivision,  
30 by the administrative rules review committee, by an agency, or  
31 by an association having not less than twenty-five members, the  
32 agency must give interested persons an opportunity to make oral  
33 presentation.

34 (2) The agency shall provide an opportunity to make these  
35 oral presentations using the Iowa communications network

1 or other electronic means if a request is received from  
2 twenty-five interested persons residing in the same city or  
3 county.

4     (3) The opportunity for oral presentation must be held  
5 at least twenty days after publication of the notice of its  
6 time and place in the Iowa administrative bulletin. The  
7 agency shall consider fully all written and oral submissions  
8 respecting the proposed rule. Within one hundred eighty  
9 days following either the notice published according to the  
10 provisions of paragraph "a" or within one hundred eighty  
11 days after the last date of the oral presentations on the  
12 proposed rule, whichever is later, the agency shall adopt a  
13 rule pursuant to the rulemaking proceeding or shall terminate  
14 the proceeding by publishing notice of termination in the Iowa  
15 administrative bulletin.

16     Sec. 5. Section 17A.4, subsection 2, Code 2014, is amended  
17 to read as follows:

18     2. An agency shall include in a preamble to each rule it  
19 adopts a specific reference to the Code section or sections  
20 being implemented and a brief explanation of the principal  
21 reasons for its action and, if applicable, a brief explanation  
22 of the principal reasons for its failure to provide in that  
23 rule for the waiver of the rule in specified situations  
24 if no such waiver provision is included in the rule. ~~This~~  
25 ~~explanatory requirement does not apply when the agency adopts a~~  
26 ~~rule that only defines the meaning of a provision of law if the~~  
27 ~~agency does not possess delegated authority to bind the courts~~  
28 ~~to any extent with its definition. In addition, if requested~~  
29 ~~to do so by an interested person, either prior to adoption~~  
30 ~~or within thirty days thereafter, the agency shall issue a~~  
31 ~~concise statement of the principal reasons for and against the~~  
32 ~~rule adopted, incorporating therein the reasons for overruling~~  
33 ~~considerations urged against the rule. This concise statement~~  
34 ~~shall be issued either at the time of the adoption of the~~  
35 ~~rule or within thirty-five days after the agency receives the~~

1 ~~request.~~

2     Sec. 6. NEW SECTION. 17A.24 Rule implementation of federal  
3 statute, regulation, or policy.

4     1. Except as otherwise explicitly authorized by state law,  
5 an agency charged with the implementation of a federal statute,  
6 regulation, or policy shall not implement the federal statute,  
7 regulation, or policy in a manner that exceeds the specific  
8 requirements of the federal statute, regulation, or policy.

9     2. Any portion of an agency rule or policy that implements  
10 a federal statute, regulation, or policy and that exceeds the  
11 specific requirements of the federal statute, regulation, or  
12 policy is automatically superceded by the specific requirements  
13 of that federal statute, regulation, or policy.

14     Sec. 7. Section 80A.4, subsection 1, paragraph g, Code 2014,  
15 is amended to read as follows:

16     g. Has not been convicted of a ~~crime described in section~~  
17 ~~708.3, 708.4, 708.5, 708.6, 708.8, or 708.9~~ felony.

18     Sec. 8. Section 99G.24, subsection 7, paragraph a, Code  
19 2014, is amended to read as follows:

20     a. Has been convicted of a ~~criminal offense~~ public offense  
21 related to the security or integrity of the lottery in this or  
22 any other jurisdiction.

23     Sec. 9. Section 135C.33, subsection 1, paragraph a, Code  
24 2014, is amended to read as follows:

25     a. For the purposes of this section, ~~the term "crime" does~~  
26 ~~not include offenses under chapter 321 classified as a simple~~  
27 ~~misdemeanor or equivalent simple misdemeanor offenses from~~  
28 ~~another jurisdiction~~ means an aggravated misdemeanor or felony.

29     Sec. 10. Section 147.55, subsection 5, Code 2014, is amended  
30 to read as follows:

31     5. Conviction of a ~~crime~~ an aggravated misdemeanor or felony  
32 related to the profession or occupation of the licensee or the  
33 conviction of ~~any crime~~ an aggravated misdemeanor or felony  
34 that would directly affect the licensee's ability to practice  
35 within a profession. A copy of the record of conviction ~~or~~

1 ~~plea of guilty~~ shall be conclusive evidence of the conviction.

2 Sec. 11. Section 148.6, subsection 2, paragraph b, Code  
3 2014, is amended to read as follows:

4 b. Being convicted of a felony in the courts of this state  
5 or another state, territory, or country. Conviction as used in  
6 this paragraph shall include a conviction of an offense which  
7 if committed in this state would be deemed a felony without  
8 regard to its designation elsewhere, ~~or a criminal proceeding~~  
9 ~~in which a finding or verdict of guilt is made or returned, but~~  
10 ~~the adjudication of guilt is either withheld or not entered.~~  
11 A certified copy of the final order or judgment of conviction  
12 ~~or plea of guilty~~ in this state or in another state shall be  
13 conclusive evidence of the conviction.

14 Sec. 12. Section 153.34, subsection 9, Code 2014, is amended  
15 to read as follows:

16 9. For the conviction of a felony in the courts of this  
17 state or another state, territory, or country. Conviction as  
18 used in this subsection includes a conviction of an offense  
19 which if committed in this state would be a felony without  
20 regard to its designation elsewhere, ~~and includes a finding or~~  
21 ~~verdict of guilt made or returned in a criminal proceeding even~~  
22 ~~if the adjudication of guilt is withheld or not entered.~~ A  
23 certified copy of the final order or judgment of conviction ~~or~~  
24 ~~plea of guilty~~ in this state or in another state constitutes  
25 conclusive evidence of the conviction.

26 Sec. 13. Section 156.9, subsection 2, paragraph e, Code  
27 2014, is amended to read as follows:

28 e. Conviction of ~~any crime~~ an aggravated misdemeanor  
29 or felony related to the practice of mortuary science or  
30 implicating the licensee's competence to safely perform  
31 mortuary science services, including but not limited to a  
32 ~~crime~~ an aggravated misdemeanor or felony involving moral  
33 character, dishonesty, fraud, theft, embezzlement, extortion,  
34 or controlled substances, in a court of competent jurisdiction  
35 in this state, or in another state, territory, or district of

1 the United States, or in a foreign jurisdiction. ~~For purposes~~  
2 ~~of this paragraph, "conviction" includes a guilty plea, deferred~~  
3 ~~judgment, or other finding of guilt.~~ A certified copy of the  
4 judgment is ~~prima facie~~ conclusive evidence of the conviction.

5 Sec. 14. Section 169.13, subsection 1, paragraph b, Code  
6 2014, is amended to read as follows:

7 b. Being convicted of a felony in the courts of this state  
8 or another state, territory, or country. Conviction as used  
9 in this paragraph includes a conviction of an offense which  
10 if committed in this state would be deemed a felony without  
11 regard to its designation elsewhere, ~~or a criminal proceeding~~  
12 ~~in which a finding or verdict of guilt is made or returned, but~~  
13 ~~the adjudication or guilt is either withheld or not entered.~~ A  
14 certified copy of the final order or judgment of conviction ~~or~~  
15 ~~plea of guilty~~ in this state or in another state is conclusive  
16 evidence of the conviction.

17 Sec. 15. Section 272C.1, subsection 6, Code 2014, is amended  
18 by adding the following new paragraph:

19 NEW PARAGRAPH. *ag.* The state racing and gaming commission  
20 created in section 99D.5.

21 Sec. 16. Section 272C.3, Code 2014, is amended by adding the  
22 following new subsection:

23 NEW SUBSECTION. 5. Notwithstanding any other provision  
24 of law to the contrary, a licensing board shall not treat a  
25 deferred judgment or a final order resulting in a deferred  
26 judgment, as deferred judgment is defined in section 907.1,  
27 as a conviction in determining whether there are grounds for  
28 licensee discipline or license denial, unless the deferred  
29 judgment is withdrawn and judgment is entered as provided in  
30 section 907.3, subsection 1.

31 Sec. 17. Section 523A.503, subsection 1, paragraph f, Code  
32 2014, is amended to read as follows:

33 f. Conviction of ~~a criminal offense~~ an aggravated  
34 misdemeanor or felony involving dishonesty or a false statement  
35 including but not limited to fraud, theft, misappropriation of

1 funds, falsification of documents, deceptive acts or practices,  
2 or other related offenses.

3 Sec. 18. Section 543B.15, subsection 3, paragraph c, Code  
4 2014, is amended by striking the paragraph.

5 Sec. 19. Section 543B.29, subsection 1, paragraph f,  
6 unnumbered paragraph 1, Code 2014, is amended to read as  
7 follows:

8 Conviction of an offense included in section 543B.15,  
9 subsection 3. ~~For purposes of this section, "conviction" means~~  
10 ~~a conviction for an indictable offense and includes the court's~~  
11 ~~acceptance of a guilty plea, a deferred judgment from the time~~  
12 ~~of entry of the deferred judgment until the time the defendant~~  
13 ~~is discharged by the court without entry of judgment, or other~~  
14 ~~finding of guilt by a court of competent jurisdiction. A copy~~  
15 ~~of the record of conviction, guilty plea, deferred judgment, or~~  
16 ~~other finding of guilt is conclusive evidence.~~

17 EXPLANATION

18 The inclusion of this explanation does not constitute agreement with  
19 the explanation's substance by the members of the general assembly.

20 This bill relates to the rulemaking process and more  
21 generally to agency decision making. As it relates to the  
22 rulemaking process, the bill requires that the preamble  
23 to proposed rulemaking specifically cite the statute being  
24 implemented, and that agencies accept written material in an  
25 electronic format, and allow persons to make oral presentations  
26 on rules through the Iowa communications network or other  
27 electronic means.

28 The bill provides that an agency shall not implement a  
29 federal statute, regulation, or policy in a manner that exceeds  
30 the specific requirements of the federal statute, regulation,  
31 or policy, unless explicitly authorized by state law.

32 As it relates to agency decision making generally, the bill  
33 requires that boards and commissions operate under Robert's  
34 rules of order.

35 The bill also relates to agency action concerning

1 professional or occupational licensing. The bill restricts the  
2 ability of a licensing board to consider a deferred judgment  
3 when deciding whether to suspend or revoke a license or impose  
4 some other licensee discipline. The bill also generally limits  
5 offenses which may be so considered to aggravated misdemeanors  
6 and felonies.